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August 21, 2017

VIA ECF

Honorable Stacey L. Meisel
United States Bankruptcy Court
M.L. King, Jr. Federal Building
50 Walnut Street, 3rd Fl.
Newark, New Jersey 07102

Re: **Ibari Anaele**
Case No. 16-29746 (SLM)

Motion to Dismiss
Hearing Date: August 29, 2017 at 10:00 a.m.

Dear Judge Meisel:

This office represents Jay L. Lubetkin, Chapter 7 trustee (the "Trustee") for Ibari Anaele (the "Debtor") in the above referenced matter. Please accept this letter brief in lieu of more formal opposition to the Debtor's recently filed motion seeking an order voluntarily dismissing her case (the "Motion"). In short, the Trustee respectfully requests that the Court deny the Motion because: (1) he is still administering the Debtor's estate in furtherance of his fiduciary duty to the bankruptcy estate; and (2) the Debtor has, to date, failed to demonstrate the necessary cause for such relief pursuant to 11 U.S.C. § 707(a) of the Bankruptcy Code (the "Code").

BACKGROUND AND RELEVANT FACTS

The Debtor filed a voluntary Chapter 7 petition on October 16, 2016. The Trustee was appointed as the Debtor's Chapter 7 trustee on October 17, 2016. The Trustee conducted the Debtor's 341(a) meeting of creditors on or about November 14, 2016. At that time, the Debtor testified to, among other things, previously being a shareholder in an entity named Kopan Anaele Construction Inc. ("KA Construction"), which she had co-owned with her former husband, Denis Bajurto ("Bajurto"). At the 341(a) the Debtor further testified that she believed KA Construction had been dissolved in 2010.

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Subsequent to conducting the 341(a) meeting of creditors the Trustee filed an application to Rabinowitz, Lubetkin & Tully, LLC ("RLT") to investigate, among other things, whether KA Construction had any unencumbered assets and if, in fact, it had been dissolved. On December 6, 2016, the Court entered an order authorizing the Trustee to retain RLT as his counsel. On February 22, 2017, the Trustee, through counsel, served a Rule 2004 subpoena on the Debtor seeking a plethora of information, including, but not limited to, the current state of KA Construction and the nature of its assets, if any.

Thereafter, through documents provided by the Debtor, as well as independent investigation conducted by RLT, the Trustee determined that KA Construction is the owner of real property located at 311-313 Elizabeth Street, Orange, New Jersey (the "Property"). The Trustee has also determined that the Property was purchased by KA Construction in 2009 for \$41,000 in cash. To date, the Debtor has been unable to provide the Trustee with proof that KA Construction was properly dissolved, such that her interest in the entity is not property of the bankruptcy estate.

In furtherance of his investigation into the matter, on or about August 10, 2017, the Trustee issued a Rule 2004 subpoena to Bajurto seeking, among other things, proof of KA Construction's dissolution and information pertaining to a sale/transfer of the Property by KA Construction to Bajurto in January 2017. Evidence of the transfer of the Property from KA Construction to Bajurto is annexed hereto as Exhibit "A." Bajurto is currently scheduled to be deposed by the Trustee on September 7, 2017. Based on the above, the Trustee may have Article 5 causes of action against Bajurto, including claims pursuant to Sections 548 and 549 of the Code.

LEGAL STANDARD AND RELIEF REQUESTED

The Debtor, while not stating it, presumably moves for an order dismissing her Chapter 7 case pursuant to Section 707(a) of the Code. Cases construing Section 707(a) in the context of a motion to dismiss filed by a debtor require the debtor to demonstrate "cause" for such relief. See In re Hall, 15, B.R. 913 (9th Cir. 1981); In re MacDonald, 73 B.R. 254 (Bankr. N.D. Ohio 1987); In re Schwartz, 58 B.R. 923 (Bankr. S.D.N.Y. 1986). Here, the Debtor, through the Motion, fails to state any reason whatsoever for the relief requested. Based on this alone, the Court should deny the Motion.

Further, as stated above, pursuant to the Code, the Trustee has a duty to "collect and reduce to money the property of the estate for which the trustee serves" for the benefit of creditors. 11 U.S.C. § 704(a)(1); see also Steinberg v. Buczynski, 40 F.3d 890 (7th Cir. 1994); In re Rollins, 175 B.R. 69 (Bankr. E.D. Cal. 1994). In this matter, the Trustee is actively investigating potential causes of action that may result in a material distribution to the Debtor's creditors. Specifically, the Trustee is investigating whether a corporation, co-owned by the Debtor, transferred unencumbered real property to her ex-husband, Bajurto.

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Based on the above, the Trustee respectfully requests that the Court deny the Motion.

Respectfully submitted,

RABINOWITZ, LUBETKIN & TULLY, LLC



Barry J. Roy

BJR:rg

cc: Ms. Ibari Anaele (via overnight mail 34 Columbia Street, West Orange, New Jersey 07052)

EXHIBIT A

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Your DPPA Permissible Use: No Permissible Purpose

Your GLBA Permissible Use: No Permissible Purpose

Property Deeds

Date: 08/21/17

Reference Code: anaele (35-001)

Name Owner : BAJURTE , DENIS (UNMARRIED)
Name Seller : KOPAN ANAELE CONSTRUCTION INC (COMPANY/CORPORATION)
Owner Address: 311 ELIZABETH ST 313, ORANGE, NJ 07050-2810
County: ESSEX
Data Source: B

Sales Information

Document Type: DEED
Sale Price:
Loan Amount:
Sale Date: 01/17/2017
Recording Date: 01/19/2017
Parcel Number:
Book:
Page:

Mortgage Information

Document Type:	Lender Name:	
Transaction Type:	Title Company:	CHICAGO TITLE INSURANCE CO
Loan Type:	Document Number:	2017005805
Interest Rate:	Interest Rate Type:	

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